IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9489 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI JASMATBHAI DHAMELIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PHAWA for M/S THAKKAR ASSOC. for Petitioner

MR PK SHUKLA, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/12/2000

ORAL JUDGEMENT

1. Affidavit of respondent No.2 submitted by AGP is taken on record.

2. The petitioner herein has filed this petition under Article 226 of the Constitution challenging his

detention order passed by the District Magistrate, Surat, 25.7.2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner came to be detained from 7th August, 2000.

3. In the grounds of detention, the detaining authority has relied upon a criminal case registered against the petitioner on 17th July, 2000 under Section 420 of the IPC and the other case of similar nature came to be registered against the petitioner on 20th July, 2000 before Kapodra Police Station of Surat City. Relying on this and other allegation, mentioned in the grounds, detaining authority has come to the conclusion that the detenu is "Property Grabber" within Section 2(h) of the PASA Act. Certain instances by which the petitioner grabbed government land are also mentioned in the grounds.

4. Learned Advocate Ms. Suman Phawa for M/s Thakkar Associates for the petitioner and Mr.P.K. Shukla, learned AGP for the respondents were heard.

5. The order came to be challenged on various grounds. It was vehemently argued that the right of detenu under Article 22(5) of the Constitution of India to make effective representation is jeopardized because the copies of documents served upon the petitioner while serving the detention order are illegible.

6. The case of the detenu - petitioner is clearly covered by the decision of this Court in the matter of KALIDAS CHANDUBHAI KAHAR vs. STATED OF GUJARAT, as reported in 1993 (2) GLR 1659 wherein this court has observed that some of the documents served upon the petitioner were illegible and the right of the detenu for making an effective representation under Article 22(5) of the Constitution of India was jeopardized. The order of detention came to be quashed by this Court on this ground alone in the above matter. The Court relied upon a decision of the Apex Court in the matter of SMT. DHARMISTA BHAGAT vs. STATE OF KARNATAKA, reported in 1989 Supp. (2) SCC 155.

7. In this case also, there are so many illegible documents, to which the attention of the learned AGP was drawn. He fairly admitted that the documents are illegible. Not only that the detenu preferred representation to supply him the legible documents, but even then, such documents are not supplied. In this view of the matter, the order passed by the detaining

authority is required to be quashed and set aside.

8. In view of the above discussion, this petition is allowed. The order passed by the District Magistrate, Surat, on 25th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Dhirubhai Jasmatbhai Dhameliya is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair